



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 6985375

Date: JAN. 28, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an optical physics researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was employed as a senior application engineer consultant and technical leader for [REDACTED] an electronic design automation firm, in South Korea.⁵ With respect to his prospective work in the United States, the Petitioner provided July 2017 email exchanges with two managers at [REDACTED] a U.S. semiconductor manufacturer, relating to his interest in design enablement and advanced [REDACTED] engineering positions.⁶

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that his proposed endeavor involves conducting [REDACTED] physics research on semiconductor design and fabrication, along with modeling and numerical analysis in computational [REDACTED] lithography." He explained that he plans to continue his research aimed at developing [REDACTED] [REDACTED] modeling algorithms, machine learning applications in [REDACTED] extreme [REDACTED] lithography [REDACTED] and [REDACTED] random access memory (MRAM) devices.

The record includes articles discussing economic growth in the smartphone market, the value consumers place on reliable wireless communications, the ways mobile devices have changed how people interact, and U.S. leadership in high performance computing. In addition, the Petitioner provided information about the evolution of data storage and the amount of data stored in the United States. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. In addition to the aforementioned information about wireless devices, data storage, and high performance computing, the Petitioner offered letters of support discussing the potential benefits of his proposed research and how it stands to advance his field. For example, [REDACTED] [REDACTED] associate professor at [REDACTED] University of [REDACTED] asserted that the Petitioner's research aimed at improving [REDACTED] modeling and development stands to advance semiconductor

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Ph.D. in physics from [REDACTED] in 2008.

⁵ He previously worked as a senior engineer with [REDACTED] Electronics from October 2008 until July 2015.

⁶ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

fabrication which “is critical to a multitude of industries within the United States.” The record also includes documentation indicating that the benefit of the Petitioner’s proposed research has broader implications, as the results are disseminated to others in the field through physics and engineering journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed research, we conclude that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, academic credentials, published articles, and conference presentations. The Petitioner also offered evidence of articles and patents that cited to his published work, and reference letters discussing his past research projects.

The Petitioner contends on appeal that his academic qualifications, work experience, research articles, citation evidence, and technological innovations indicate that he is well positioned to advance his proposed endeavor. For the reasons discussed below, the evidence is insufficient to demonstrate that he is well positioned to advance his proposed research under *Dhanasar*’s second prong.

In letters supporting the petition, several of the Petitioner’s references discussed his prior research and work experience.⁷ For example, [REDACTED] design technology [REDACTED] fellow at [REDACTED], indicated that the Petitioner devised a method while working at [REDACTED] to address “mismatches between the design rules for a chip and the actual manufacturability of a chip that follows those rules.” [REDACTED] explained that this method “incorporates [REDACTED] [REDACTED] feedback to optimize semiconductor layout given the initial set of design rules” and “automates aspects of [REDACTED] that previously required substantial manual intervention from the user, most notably, feature segmentation and sub-resolution assisted feature placement.” He further contended that the Petitioner’s work “was instrumental in increasing the production yield of the [REDACTED] gate process” at [REDACTED] and that [REDACTED] has licensed this [REDACTED] process. Furthermore, [REDACTED] noted that the Petitioner “published his findings as ‘[REDACTED] [REDACTED] in the proceedings of the 2011 [International Society for Optical Engineering] Advanced Lithography Symposium.” The record includes a citation report from Google Scholar indicating that the aforementioned article has received two citations since its publication in 2011.⁸

With respect to the Petitioner’s graduate research at [REDACTED], [REDACTED], professor of physics at [REDACTED] University in [REDACTED] noted that he and the Petitioner “worked together on a theoretical physics project at [REDACTED].”⁹ [REDACTED] stated that they “studied the optimal conditions for converting atoms of [REDACTED] into molecules by two different methods” and “formulated genetic algorithms to find the optimal sweep time for converting atoms into molecules.” He further indicated that the Petitioner investigated “two-color [REDACTED] photo association as an alternative to [REDACTED] resonances” and found that atom and molecular counts “bifurcate in a weakly driven cavity,

⁷ We discuss only a sampling of these letters, but have reviewed and considered each one.

⁸ One of these citations reflects a self-citation by the Petitioner’s coauthor, [REDACTED].

⁹ The record indicates that the Petitioner attended [REDACTED] from September 2001 until January 2008 and that [REDACTED] graduated from [REDACTED] in 2004.

indicating a transition from the stable steady state to [REDACTED] oscillations.” The Petitioner, however, has not demonstrated that this theoretical physics work has been influential among physicists, has served as an impetus for progress or generated positive discourse in the field, or otherwise represents a record of success or progress rendering him well positioned to advance his proposed research.

Regarding the Petitioner’s graduate work towards his master’s degree from [REDACTED] University, [REDACTED] executive partner at [REDACTED] (a technology venture capital firm) stated that he “was [the Petitioner’s] supervisor from 1999-2000 at [REDACTED], where we both worked as research scientists.” [REDACTED] asserted that he and the Petitioner developed “a new material as a replacement for the [REDACTED] media conventionally used in computer hard disk drives” and that their “use of [REDACTED] with the addition of an [REDACTED] template layer, introduces significant improvements in [REDACTED] over current [REDACTED] structures.” He further indicated that their “two co-authored articles resulting from this project, published in *Journal of Applied Physics* and *IEEE Transactions on Magnetics*, are [the Petitioner’s] most-cited works.” The aforementioned Google Scholar report reflects that these articles have been cited 35 and 12 times respectively since 2000. The Petitioner does not, however, offer comparative statistics showing the significance of this level of citation within his field.

As further evidence under *Dhanasar*’s second prong, the Petitioner’s response to the Director’s request for evidence (RFE) included two letters of support from scientists who indicate that they have cited to his graduate work involving ways to fabricate [REDACTED] out of [REDACTED] but he has not shown that this particular research constitutes a record of success in his proposed endeavor of [REDACTED] physics research or [REDACTED] lithography. In addition, the reference letters initially submitted and provided in response to the Director’s RFE do not contain sufficient information concerning the Petitioner’s research and development activities since he commenced employment with [REDACTED] in August 2015, and the record does not show that he has published or presented any research in his field after 2011, so as to demonstrate continued progress towards achieving his proposed endeavor.

Furthermore, while the July 2017 email exchanges with managers at [REDACTED] indicated that the Petitioner applied for two positions with this semiconductor manufacturer, these communications do not offer adequate information to establish whether his work with the company will involve research relating to his proposed endeavor. Without sufficient evidence demonstrating the means or financial support to undertake his proposed research in the United States, the Petitioner has not shown that his plan for future activities renders him well positioned to advance his endeavor.

The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies and while working for [REDACTED] Electronics, but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published and presented work has served as an impetus for progress in the optical

physics field or that it has generated substantial positive discourse in the semiconductor manufacturing industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research aimed at [REDACTED] lithography or [REDACTED] modeling. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his education, research experience and accomplishments, and the importance of his field. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.